United Nations E/CN.15/2014/19

Economic and Social Council

Distr.: General
10 April 2014

Original: English

Commission on Crime Prevention and Criminal Justice
Twenty-third session
Vienna, 12-16 May 2014
Item 6 of the provisional agenda*
Use and application of United Nations standards and norms in crime prevention and criminal justice

Report of the open-ended intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners at its third meeting

Note by the Secretariat

I. Introduction

1. The Commission on Crime Prevention and Criminal Justice established the open-ended intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners at the request of the General Assembly[1] to exchange information on best practices, as well as national legislation and existing international law, and on the revision of the existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps.

2. The first meeting of the Expert Group was held in Vienna from 31 January to 2 February 2012. The results of that meeting, including the identification of nine thematic areas for possible consideration, were reported to the Commission at its twenty-first session.[2] The General Assembly, in its paragraph 8 of its resolution 67/188, authorized the Expert Group to continue its work, within its mandate, with a view to reporting on its progress to the Commission at its twenty-second session, in 2013.

* E/CN.15/2014/1.
[1] Resolution 65/230, para. 10.
[2] See E/CN.15/2012/18.

V.14-02278 (E) 280414 290414

Please recycle

3. At the invitation of the Government of Argentina, the second meeting of the Expert Group was held in Buenos Aires, from 11 to 13 December 2012. At that meeting the Expert Group had before it a working paper prepared by the Secretariat,[3] which outlined proposals for the consideration of Member States on the basis of a detailed comparison of each of the nine preliminary areas and the respective rules in the Standard Minimum Rules for the Treatment of Prisoners against a comprehensive variety of international and regional instruments, standards and norms, guidelines, observations and other relevant publications and tools, a full list of which was annexed to that working paper.

4. The results of the second meeting of the Expert Group, including the identification of specific rules and issues for the revision of the Standard Minimum Rules, were reported to the Commission at its twenty-second session.[4] The General Assembly, in paragraph 6 of its resolution 68/190, authorized the Expert Group to continue its work, within its mandate, with a view to reporting to the Commission at its twenty-third session, in 2014.

5. The third meeting of the Expert Group was held in Vienna from 25 to 28 March 2014, with extrabudgetary resources provided by the Government of Brazil. The Secretariat prepared a working paper for that meeting, pursuant to paragraph 9 of General Assembly resolution 68/190. In paragraph 8 of that resolution, the Assembly invited Member States to continue to be engaged in the revision process by submitting to the Secretariat, by 30 September 2013, proposals for revision in the nine areas identified, and invited civil society and relevant United Nations bodies to contribute to the process. Accordingly, the working paper consisted of the current version of the Standard Minimum Rules, into which all submissions received from Member States had been incorporated alongside the issues and the rules identified for revision by the Expert Group at its second meeting. The working paper was made available to the Expert Group in the six official languages of the United Nations.

6. At the time of issuance of the working paper, the Secretariat had received 31 individual and joint responses from 39 Member States, which provided concrete drafting and revision proposals; comments on the recommendations of the earlier Expert Group meetings; substantive suggestions for new rules to be included; and reference to national laws, regulations and good practice. All substantive submissions received by the Secretariat were posted on the website of the United Nations Office on Drugs and Crime.

7. In view of the complexity of the issues discussed and the number and variety of proposals submitted to the Secretariat, the meeting considered several rules for revision in the nine areas identified, and achieved consensus on some of those it discussed. Some delegations noted that a meeting with interpretation in all official languages of the United Nations would have been preferable.

[3] UNODC/CCPCJ/EG.6/2012/2.

[4] See E/CN.15/2013/23.

II. Recommendations

8. The Expert Group made the following recommendations to the Commission on Crime Prevention and Criminal Justice at its twenty-third session:

(a) The Commission should consider extending the Expert Group's mandate so that it can continue its work;

(b) Should the Commission decide to extend the mandate of the Expert Group, it should also consider appealing to Member States to provide the requisite extrabudgetary resources, based on estimates provided by the Secretariat, for the substantive and logistical preparation and servicing of the future meetings, including for the translation of documentation and the provision of simultaneous interpretation services in the six official languages of the United Nations, as essential elements for the success of the meetings;

(c) The Commission should consider affirming that the revision of the Standard Minimum Rules is a time-intensive exercise of crucial importance and that a suitable time frame would be helpful in achieving an outcome of suitable quality;

(d) The Commission should consider appealing to Member States to promote the participation of prison administration experts and practitioners in addition to other relevant experts in their delegations;

(e) The Commission should consider acknowledging the contribution made by intergovernmental organizations and civil society and recommend that they should continue to be actively involved in the process, in accordance with the rules of procedure of the functional commissions of the Economic and Social Council;

(f) The Commission should consider reiterating that any changes to the Standard Minimum Rules should not lower any of the existing standards, but should improve them so that they reflect the recent advances in correctional science and good practices, so as to promote safety, security and humane conditions for prisoners.

9. Without excluding the possibility of holding the next meeting in Vienna, the Expert Group took note with appreciation of the preliminary offers of the Governments of Ecuador and South Africa to host the next meeting.

III. Organization of the meeting

A. Opening

10. The third meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners was held in Vienna from 25 to 28 March 2014. It was opened by Aldo Lale-Demoz, Director of the Division for Operations and Deputy Executive Director of the United Nations Office on Drugs and Crime.

B. Attendance

11. The meeting was attended by over 130 representatives of 63 Member States: Algeria, Angola, Argentina, Austria, Belarus, Bolivia (Plurinational State of), Brazil, Burkina Faso, Canada, China, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Guatemala, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Lebanon, Mexico, Morocco, Namibia, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Qatar, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

12. One non-member State was represented by an observer: State of Palestine.

13. The Office of the United Nations High Commissioner for Human Rights and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were represented at the meeting.

14. The following institutes of the United Nations crime prevention and criminal justice programme network were represented at the meeting: International Scientific and Professional Advisory Council and Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

15. The following specialized agency was represented at the meeting: World Health Organization (Regional Office for Europe).

16. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe and the International Committee of the Red Cross were represented at the meeting.

17. Eleven non-governmental organizations in consultative status with the Economic and Social Council were represented at the meeting.

C. Election of officers

18. At its 1st meeting, on 25 March 2014, the Expert Group elected the following officers:

Chair:	Ignacio Baylina Ruiz (Spain)
Vice-Chairs:	Hernán Estrada Román (Nicaragua) Maria Grochulska (Poland) Lucky Mthethwa (South Africa)
Rapporteur:	Vongthep Arthakaivalvatee (Thailand)

D. Adoption of the agenda

19. Also at its 1st meeting, the Expert Group adopted the following agenda:

1. Opening of the meeting.

2. Election of officers.

3. Adoption of the agenda and organization of work.

4. Preliminary observations.

5. Consideration of the issues and rules identified for revision by the second meeting of the Expert Group in the following areas:[5]

   (a) Respect for prisoners' inherent dignity and value as human beings (rules 6, para. 1; 57-59; and 60, para. 1);

   (b) Medical and health services (rules 22-26; 52; 62; and 71, para. 2);

   (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32);

   (d) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rules 7, 44 and 54 bis);

   (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7);

   (f) The right of access to legal representation (rules 30; 35, para. 1; 37; and 93);

   (g) Complaints and independent inspection (rules 36 and 55);

   [...]

   (i) Training of relevant staff to implement the Standard Minimum Rules (rule 47).

6. Recommendations and conclusions.

7. Any other business.

E. Summary of deliberations

20. The working paper prepared by the Secretariat, which highlighted the drafting and revision proposals submitted by Member States for revisions in the nine areas identified by the General Assembly in its resolution 68/190, and as reflected in item 5 of the agenda, also included additional proposals and inputs covering other areas of the Standard Minimum Rules for the Treatment of Prisoners.

21. However, at its 1st and 2nd meetings, owing to the limited time available, the Expert Group agreed to focus discussions on the issues and rules that had been

[5] Area (h), "The replacement of outdated terminology" (rules 22-26, 62, 82-83 and various others) was not addressed as a separate area but was addressed throughout the meeting in the context of the other areas.

identified at the meeting held in Buenos Aires and endorsed by the General Assembly.

22. During their preliminary observations (agenda item 4), some Member States raised the issue of the preambular part of the Standard Minimum Rules and the scope of application of the Rules. No further discussions were held on those matters in the course of the meeting.

23. In the ensuing discussions, at its 3rd to 8th meetings, the Expert Group concentrated on areas (a): respect for prisoners' inherent dignity and value as human beings; (b): medical and health services; and (c): disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet.

24. The outcome of the detailed exchange of views and in-depth consideration of the rules in those areas is reflected below.

I. Agreed

Area (a): respect for prisoners' inherent dignity and value as human beings

Rule 6

(1) "The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status."

Rule 57

No change to original text.

Rule 58

"The purposes of a sentence of imprisonment or similar measures deprivative of persons' liberty are primarily to protect society against crime and to reduce the incidence of recurrence. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life."

Rule 59

"To this end, institutions and competent authorities should make available all the remedial, health-oriented, vocational training-based, sports-based, educational, moral, spiritual, social, professional and other forms of assistance that are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners."

Rule 60

(1) No change to original text.

Area (b): health-care services

Rule 22

(0)[6] "The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care as are available in the community, and should have access to necessary health services free of charge without discrimination on the grounds of their legal status. The health services should be organized in close relationship to the general public health administration. They shall be organized in a way that facilitates continuity of treatment and care."

Area (c): disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet

Rule 27

(1) "Prison administration shall ensure proportionality between disciplinary punishment and the offence for which it is established."

(2) "Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute prevention and resolution mechanisms to prevent disciplinary offences, as well as to prevent and resolve conflicts."

Rule 30

(1) bis "Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay."

25. The Expert Group further proposed the introduction of a new heading, "Searches", and a new rule 34 bis:

Searches

Rule 34 bis

(1) "The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and take into account international standards and norms, keeping in mind the need to ensure security in the institution. Searches shall be conducted in a manner that respects the dignity and privacy of the individual being searched."

(2) "Searches shall respect the principles of proportionality, legality and necessity. Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, appropriate records of searches shall be kept by the prison administration, in particular of strip and body-cavity searches and searches of cells, as well as the reasons for those searches, the identities of those who conducted them and any results of the searches."

(3) "Intrusive searches, including strip searches and body-cavity searches, should be undertaken only if absolutely necessary. Institutions shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

[6] To precede the existing rule 22 (1).

Body-cavity searches shall only be conducted, at a minimum, by staff appropriately trained by medical professionals in standards of hygiene and safety, and should not involve the medical staff primarily responsible for the care of the prisoner."

2. Discussed and not yet agreed

Area (a): respect for prisoners' inherent dignity and value as human beings

26. Consideration of the relocation of rules 57 to 59 and rule 60, paragraph 1, as well as the possibility of adding further principles of general application, was deferred to the next meeting.

Area (b): medical and health services

Rule 22

(1) "Institutions shall provide for medical, surgical, psychological and psychiatric services, with particular attention to [the specific health needs of [individual] prisoners] [specific categories of prisoners] [vulnerable groups] [who belong to vulnerable groups] [in vulnerable situations] [such as older [adults] [persons], women, [lesbian, gay, bisexual, transgender and intersex prisoners,] young prisoners, [prisoners with substance-abuse problems and persons with disabilities, persons with HIV/AIDS, persons whose conditions might be exacerbated by imprisonment and people with terminal diseases, or any others.] At every institution, there shall be available [access to] the services of a team of health-care professionals, [at least one of whom should have adequate knowledge of psychiatry] [including psychiatrists]."

Area (c): disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet

27. With reference to conflict prevention, mediation or any other alternative dispute prevention and resolution mechanisms introduced in rule 27, paragraph 1, it was proposed to include training in those areas under rule 47 when the discussion reaches area (i): training of relevant staff to implement the Standard Minimum Rules.

Rule 29

"The following shall always be determined by the law or by the regulation of the competent [administrative] [or judicial] authority:

"(a) Conduct constituting a disciplinary offence;

"(b) The types and duration of punishment which may be inflicted;

"(c) The authority competent to impose such punishment."

Rule 30

(1) "No prisoner shall be punished for disciplinary offences except in accordance with due guarantees and the terms of such law or regulation, and never twice for the same [offence] [act]."

(2) "Prisoners [shall be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them and have adequate time,

facilities and other adequate forms of assistance for the preparation of their defence] [shall be given the possibility of due defence] [to be duly heard] [and have the possibility of requesting a hearing or the attendance of witnesses]."

28. The Expert Group further considered the introduction of a new rule 37 bis, on search procedures in the course of visits, as follows:

Rule 37 bis

(1) "Institutions shall develop search procedures applicable to visits to ensure security in their facilities, while respecting the [rights] [entitlements] of prisoners to receive visits, the inherent dignity of the visitor, and the principles of proportionality, legality and necessity."

(2) "In this regard, institutions shall develop [appropriate] [alternative] inspection methods [other than strip and intrusive searches]. Strip and intrusive searches shall not be done unless absolutely necessary. [Body-cavity searches shall be conducted only by medical staff.] [Whenever a search is absolutely necessary, it] [Searches] shall be conducted in private by trained staff of the same sex as the visitor."

(3) "Intrusive searches, including strip searches and body-cavity searches, should be undertaken only if absolutely necessary and with the consent of the individual [and under no circumstances be applied to children]. Institutions shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the visitor. Body-cavity searches shall be conducted only, at a minimum, by staff appropriately trained by medical professionals in standards of hygiene and safety."

Area (h): replacement of outdated terminology

29. The Expert Group considered the issue of outdated terminology, and some delegations raised the issue of translations being inadequate in some cases, in particular with respect to gender. Other delegations suggested that there were other ways to deal with this issue.

30. Delegations suggested several options for preparing for the next meeting of the Expert Group, including requesting the Secretariat to update the working paper (UNODC/CCPCJ/EG.6/2014/CRP.1), a paper of the Chair or the Bureau, or commissioning an outside expert or a meeting of experts selected by the five regional groups to produce a paper reflecting the work done by the first three meetings of the Expert Group, and making it available, for the consideration of Member States and in a consolidated, user-friendly and systematic manner with a view to facilitating the deliberations of future meetings of the Expert Group.

31. Several delegations urged that all efforts should be made to finalize the revision process in order that the newly revised Standard Minimum Rules for the Treatment of Prisoners could be submitted to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Qatar in 2015, for its consideration, to be recommended to the Commission on Crime Prevention and Criminal Justice for adoption.

IV. Adoption of the draft report and closure of the meeting

32. At its 8th meeting, on 28 March 2014, the Expert Group adopted its draft report, including its recommendations, for submission to the Commission on Crime Prevention and Criminal Justice at its twenty-third session, pursuant to General Assembly resolution 68/190.

33. The Expert Group expressed its gratitude to the Government of Brazil for its generosity in providing the extrabudgetary funding to enable the third meeting of the Expert Group to take place in Vienna.